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Attorneys for Defendants and Cross-Complainants  
 David D. McDonald, Donna K. McDonald,  
 National Expert Witness Network and Technology  
 CLE

**UNITED STATES DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA**

JENNIFER OSBELT,

Plaintiff(s);

v.

DAVID D. McDONALD, DONNA K.  
 McDONALD, and DOES 1-10, inclusive,

Defendant(s).

Case No. CV 08-0534 PJH

**DECLARATION OF DEFENDANT AND  
 CROSS-COMPLAINANT DAVID  
 MCDONALD IN SUPPORT OF  
 DEFENDANTS OPPOSITION TO  
 PLAINTIFF'S MOTION TO REMAND**

Date: May 21, 2008  
 Time: 9:00 a.m.  
 Dept: Courtroom 3, 17<sup>th</sup> Fl.

**AND RELATED CROSS-ACTION**

I, David McDonald, declare and state as follows:

1. I am the Defendant and Cross-Complainant in the above entitled action. I have personal knowledge of the matters set forth below. If called upon as a witness, I could and would competently testify to the matters set forth below.

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2. From the time we founded NEWN my wife and I always intended to add a 401(k) plan for NEWN employees when the company became sufficiently profitable. In December 2006, a meeting was held at the NEWN headquarters regarding the implementation of a 401(k) plan. In attendance were all NEWN employees, all NEWN owners, including the Plaintiff Jennifer Osbelt, NEWN's bookkeeping CPA, tax CPA and the 401(k) administrators, Bidwell Consulting and institutional investor Edward Jones. At this juncture, all NEWN employees and owners, including Plaintiff Jennifer Osbelt, provided Edward Jones with a signed document containing their home addresses and tax ID numbers giving Edward Jones the authorization to set up their 401(k) and profit sharing contributions.

3. Attached as Exhibit B is a copy of a letter dated July 2, 2007 that Plaintiff Jennifer Osbelt sent to NEWN's 401(k) Profit Sharing Plan's administrators Bidwell Consulting, institutional investor Edward Jones and me accusing my wife and me of committing "an intentional act of fraud" with NEWN's 401(k) plan.

4. Attached as Exhibit C is a copy of an email I received on July 2, 2007 from Creasia Gale of Bidwell Consulting forwarding an email she received from Dave Banathy of Edward Jones discussing a conversation with Jennifer, where Jennifer made the following accusations:

- She accused Bidwell Consulting of "conspiring with NEWN to withhold her retirement money illegally". Ex. C ¶ 7
- She accused my wife and me of having "embezzled and stolen money from her". Ex. C ¶ 9
- She accused Bidwell Consulting of being "in on it" and being part of the "embezzlement and theft". Ex. C ¶ 10
- She called Mr. Banathy of Bidwell Consulting "stupid". Ex. C ¶ 11
- She threatened to "join [Bidwell Consulting] in a lawsuit" that "would cost [Bidwell Consulting] a lot of money in legal fees". Ex. C ¶ 8

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- She told Creasia Gale of Bidwell Consulting that “she would go to jail for helping embezzle money from [Osbelt]”. Ex. C.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on April 29, 2008 in Magalia, California.

/s/ David McDonald

David McDonald

**EXHIBIT B**

July 2, 2007

David and Donna McDonald  
15309 Northlake Road  
Magalia, CA 95954  
PRIORITY MAIL

RE: Complaint - NEWN 401K - Edward Jones Account # 921-12082-1-1

Dear Mr. and Mrs. McDonald:

I am a general partner and 25% owner of National Expert Witness Network LLC and a trustee of its 401K plan.

I questioned our third party administrator and compliance manager, Bidwell Consulting regarding the following:

- 1.) why was money deducted from my earnings without my knowledge and without an executed salary reduction form,
- 2.) where are my missing funds, and
- 3.) why was I not given a 30 day blackout notice pursuant to ERISA rules before the plan was changed?

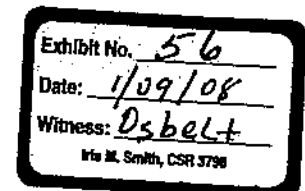
If you know answers to the above referenced questions, please let me know immediately.

Creasia Gale from Bidwell Consulting never addressed the questioned transactions, and when I did get her on the phone she hung up on me. I finally spoke with Dave Banathy from Bidwell Consulting, and he said that Bidwell Consulting is our compliance manager, BUT they are NOT responsible for ERISA compliance mistakes.

Bidwell Consulting, Edward Jones and you have ignored my complaints regarding the withdrawal of my income and even went so far as to create a trustee removal letter indicating that I am no longer a trustee of my company's 401K plan. Incidentally, I complained of the ERISA violations seven days before you sent the "trustee removal note".

When I called Edward Jones regional office (last time was June 29, 2007), Edward Jones still had me listed as a trustee verifying that the trustee removal letter sent to me on April 20, 2007 was not valid. I believe that this letter sent by you and then re-sent by Bidwell Consulting was an intentional act of fraud, and the situation was further aggravated by Joe Cunha from Edward Jones who turned a blind eye.

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NEWN 00438

I called Bidwell Consulting repeatedly because they are our Jones plan compliance manager. Dave Banathy from Bidwell Consulting said he cannot speak with me and that Bidwell Consulting is NOT responsible for compliance even though they are listed at Edward Jones as our third party administrator.

As you know, I currently have a court case filed against you in the county of San Mateo, CA, which includes Breach of Fiduciary duty. My attorneys and I are trying to find out if Bidwell Consulting and/or Edward Jones knew about the questionable nature of the retirement plan transactions or were simply following directions from you.

If we cannot get a straight answer as to how my money could have been deducted from my salary without my authorization, I have no other option than to include all related parties on the complaint, since no one is accepting responsibility.

Sincerely,



Jennifer Osbelt

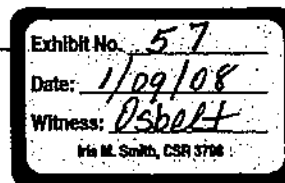
PMB 726  
270 Redwood Shores Parkway  
Redwood City, CA 94065  
[josbelt@patechnical.com](mailto:josbelt@patechnical.com)  
650-208-0918

CC: Creasia Gale, Dave Banathy - Bidwell Consulting  
Joe Cunha - Edward Jones

**EXHIBIT C**

**David McDonald**

**From:** Creasia Gale [gale@bidwellconsulting.com]  
**Sent:** Monday, July 02, 2007 10:23 AM  
**To:** David McDonald  
**Subject:** FW: Conversation with Jennifer



Hi Dave,

Listed below is an e-mail from Dave Banathy, one of my partners that spoke to Jennifer Osbelt on June 29, 2007.

I also spoke to her briefly on Friday. She requested a black out notice and stated that the trustee notification letter was not valid and also said that I would go to jail for helping you embezzle money from her. I ended the conversation.

Please let me know if you have any questions.

Best regards,  
Creasia Gale

Creasia Gale, APA  
Consultant/Principal  
Bidwell Consulting Services, Inc.  
110 Independence Circle, Suite 102  
Chico, CA 95973

[www.bidwellconsulting.com](http://www.bidwellconsulting.com)  
530.891.9519 Phone  
530.891.9527 Fax  
866.424.3935 Toll Free  
(866.4BIDWELL)

**From:** Dave Banathy  
**Sent:** Monday, July 02, 2007 9:58 AM  
**To:** Creasia Gale  
**Subject:** Conversation with Jennifer

Creasia-

I spoke with Jennifer on Friday regarding the NEWN 401(k) Profit Sharing Plan.

She stated the following to me:

- 1) she was still a trustee of the plan although she also told me that she received the written trustee removal letter but that letter isn't valid according to her - I told her that the plan document provides for trustees to be removed with or without cause effective as of the notice
- 2) we are responsible for the compliance relating to the plan and that there has been a violation of a 30 day black out notice because a plan change - I told her that I wasn't aware that she was unable to change her investment options and that there was a Sarbanes Oxley notice required or any violation that occurred or did not occur and that would be in the realm of persons controlling those choices (plan sponsor) and not us as a TPA
- 3) she currently has access to her account and can direct her investment choices at Edward Jones
- 4) the compliance department at Edward Jones told her that we are responsible for a compliance violation regarding a 30 day black out notice - I asked her who she spoke to and she said that she would initiate a conference call with them and me, but that she would not give me the name of the person with whom she spoke - I informed her that I would not go through a conference call with Edward Jones regarding her plan because she was not a trustee of the plan and I did not want Edward Jones to get the impression that she still was
- 5) we are still her TPA and we must do what she is requesting - I told her that she was no longer a trustee, I did not know what she wanted from me and that I would not speak with her regarding the plan anymore as she was no longer a fiduciary
- 6) she cannot withdraw her assets from the plan - I told her, just like I did to her new investment person and her a couple of months back, that the plan document (which I faxed previously) states that a participant is only entitled

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to receive a distribution from their account on the first administratively feasible date the first plan year after their termination of employment

- 7) we are conspiring with NEWN to withhold her retirement money illegally – I told her that as far as I know we have nothing to do with withholding money from her
- 8) she has tried to be civil about things and that she will join us in a lawsuit if I did not return her call by Monday, July 2, 2007 5:00 p.m. so I could help her or it will cost us a lot of money in legal fees – I told her that I would talk with someone from Edward Jones to see if there was anything I could assist her with regarding her account at Edward Jones
- 9) the owners of NEWN have embezzled and stolen money from her – I told her that I had no information regarding that
- 10) we are "in on it" and we are part of that embezzlement and theft – I told her that we have nothing to do with investments, withholding monies, contribution deposits or anything along those lines when it comes to the plan and that I did not know what she was talking about
- 11) that I thought she was "stupid" and didn't know what she was talking about – I told her that I did not think that she was stupid and unfortunately I did not know what she was talking about
- 12) she was frustrated and people are taking her money and she cannot get the answers she wants and that I should put myself in her shoes – I said that she should put herself in mine and that in regards to the plan she is no longer a fiduciary and I would not discuss the plan further with her.

That is about the sum of the conversation. There were various other threats and disparaging remarks directed towards NEWN. Since she is threatening litigation I will not speak with her again other than through counsel.

Dave

David T. Banathy, APA

Principal

Bidwell Consulting Services, Inc.  
PO Box 8150  
Chico CA 95927-8150

(530) 891-9519 (tel)  
(530) 891-9527 (fax)  
dave@bidwellconsulting.com

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